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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES WILLIAMS,

Defendant and Appellant.

B288900

(Los Angeles County  
Super. Ct. No. BA383041)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, William N. Sterling, Judge. Dismissed.

Christopher Love, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Shawn McGahey Webb and David A. Voet,  
Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

In 2011 appellant Charles Williams was convicted of 12 counts of robbery with a finding that he personally used a firearm during the commission of the offenses. His conviction was affirmed and the judgment became final in 2013. In 2018, appellant sought resentencing under newly amended Penal Code section 12022.53, subdivision (h) (section 12022.53(h)).<sup>1</sup> Because section 12022.53(h) does not apply retroactively to final judgments, the trial court lacked jurisdiction to award the relief requested, and the trial court's order is not appealable. The appeal is therefore dismissed.

## FACTUAL AND PROCEDURAL BACKGROUND

In 2011, appellant was tried by jury and convicted of 12 counts of robbery (§ 211), with a finding that he personally used a firearm during the commission of the offenses. (§ 12022.53, subd. (b).) He was sentenced to 26 years in prison. We affirmed the conviction. (*People v. Williams* (Feb. 19, 2013, No. B239136) 2013 WL 603937 [nonpub. opn.]) A remittitur was filed on April 25, 2013.

“When appellant was originally sentenced in [2012], the trial court had no discretion to strike or dismiss a firearm use enhancement. [Citation.] However, Senate Bill No. 620 amended [section 12022.53], effective January 1, 2018, to give the trial court discretion, in limited circumstances, pursuant to section 1385, to strike a firearm enhancement in the interest of justice. [Citation.] Subdivision (h) of section 12022.53 now provides, ‘The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority

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<sup>1</sup> All further statutory references are to the Penal Code.

provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (*People v. Johnson* (2019) 32 Cal.App.5th 938, 941 (*Johnson*).)

In February 2018, appellant filed a motion for resentencing under sections 1385 and 12022.53(h). The trial court denied the motion on March 1, 2018, stating, “The motion is denied as the court no longer has jurisdiction to resentence. [Citation.] Nothing in the amendment to Penal Code section 12022.53[, subdivision (h) provides the court with jurisdiction to resentence after execution of sentence has commenced and the matter is not before the court for resentencing on some other valid basis.” Appellant timely appealed.

### **DISCUSSION**

On appeal, appellant asserts that section 12022.53(h) should be applied retroactively to cases that are final. Appellant contends that the Legislature intended the amended statute to apply to final cases to reduce prison populations, that there is no constitutional impediment to applying the amended statute to final cases, and that not applying section 12022.53(h) retroactively would violate his equal protection rights. The Attorney General disagrees, and asserts that the trial court did not have jurisdiction “because the discretion to strike or dismiss enhancements [under amended section 12022.53(h)] can only be exercised at sentencing or upon resentencing, neither of which were pending in this case.” The Attorney General also asserts that the court’s order is not appealable, and it has filed a motion to dismiss the appeal.

The Attorney General is correct. “[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for

petitioning for a writ of certiorari in the United States Supreme Court has passed.” (*People v. Vieira* (2005) 35 Cal.4th 264, 306.) Appellant acknowledges that his judgment was final before filing his request for resentencing.

Where a judgment is final, the trial court has no jurisdiction to grant relief under amended section 12022.53(h); “the new amendment does not apply to final judgments.” (*Johnson, supra*, 32 Cal.App.5th at p. 941; see also *People v. Fuimaono* (2019) 32 Cal.App.5th 132, 135 [“Senate Bill No. 620, however, does not contain language authorizing resentencing of convictions after they became final. And absent any new authority to resentence defendant under Senate Bill No. 620, the trial court lacked jurisdiction to grant defendant’s resentencing request.”]; *People v. Hernandez* (Apr. 15, 2019, B287551) \_\_\_ Cal.App.5th \_\_\_ [2019 WL 1593878].) Since the trial court lacked jurisdiction to grant the relief requested in appellant’s motion, its order denying the motion did not affect his substantial rights and is not an appealable postjudgment order. (§ 1237, subd. (b); *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208; *Johnson, supra*, 32 Cal.App.5th at p. 941; *Hernandez, supra*, \_\_\_ Cal.App.5th \_\_\_ [2019 WL 1593878 at \*2].) Thus, “[t]he appeal is ‘irregular’ and will be dismissed. (§ 1248.)” (*Johnson, supra*, 32 Cal.App.5th at p. 941; see also *Fuimaono, supra*, 32 Cal.App.5th at p. 135.)

**DISPOSITION**

The appeal is dismissed.

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COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.